

## **REMARKS**

Claims 1-33 are currently pending. In this Amendment, claims 1-3, 9, 11-13, 19, 21-23 and 29 have been amended, and new claims 31-33 have been added.

Claims 1, 11 and 21 have been amended to specify that the claimed spectroscopic apparatus includes one or more than one upgraded primary calibration algorithm for one or more than one analyte, the one or more than one upgraded primary calibration algorithm in operative association with the spectroscopic apparatus and developed on the spectroscopic apparatus by combining some, or all of a calibration data set derived from a primary calibration set and obtained from one, or more than one other apparatus with additional data obtained from the spectroscopic apparatus using a calibration set smaller than the primary calibration set and comprising samples distinct from and similar to those of the primary calibration set.

Support for this amendment is provided by paragraphs [0068] (including incorporated U.S. Patent No. 6,651,015), [0069], [0070], [0082], [0084], [0086], [0088], [0096], [0105] and [0109].

### **Objection to Description**

Examiner has requested that the application data found in paragraphs [0001]-[0004] and throughout the specification be updated. The application data in paragraphs [0001]-[0004], [0103], [0137] and [0186] has been updated, as required by Examiner.

Removal of Examiner's objection is respectfully requested in view of the above amendments.

**Objection Under 37 C.F.R. 1.57**

Examiner has alleged that the incorporation by reference of publications in paragraphs [0007], [0079], [0094], [0195] and [0242] are ineffective. Applicant respectfully disagrees with Examiner. Applicant respectfully submits that the subject matter being incorporated from the listed references is not essential to the presently claimed invention. As a result, the incorporation by reference of the publications in paragraphs [0007], [0079], [0094], [0195] and [0242] is proper and complies with 37 C.F.R. 1.57.

Reconsideration and removal of Examiner's objection is respectfully requested in view of the above comments.

**Objection Under 37 CFR 1.121**

Examiner has objected to the drawings under 37 CFR 1.121(d), indicating that the sample vessels recited in claims 2, 12 and 22 should be illustrated in the drawings. Applicant respectfully traverses Examiner's objection. It is respectfully submitted that the drawings presently on file sufficiently illustrate and permit a clear understanding of the structural features of the presently claimed spectrophotometric apparatus. As a result, further drawings showing well-known sample holders, such as a cuvette, a sample tab, a pipette tip, tubing, a labelled test tube, an unlabeled test tube, blood bag tubing, a transparent sample container, a translucent sample container, and a flow-through cuvette, are not needed for a proper understanding of the invention.

Reconsideration and removal of Examiner's objection is respectfully requested in view of the above comments.

### **Objection Under 37 CFR 1.75(c)**

Examiner has objected to claims 2-3, 9, 12-13, 19, 22-23 and 29 under 37 CFR 1.75(c) for failing to further limit the subject matter of a preceding claim. Applicant has addressed Examiner's objection by (i) adding new claims 31-33, which are dependent on claims 1, 11 and 21, respectively, and specify that the claimed apparatus further comprises a sample tab, and (ii) making 2-3 and 9; 12-13 and 19; and 22-23 and 29 dependent on new claims 31, 32 and 33, respectively.

Reconsideration and removal of Examiner's objection is respectfully requested in view of the foregoing comments and amendments.

### **Claim Rejections Under 35 U.S.C. § 102/103**

Examiner has rejected claims 1-3, 5 and 9-10 under 35 U.S.C. 102(b) as allegedly being anticipated by U.S. Patent No. 3,703,336, has rejected claims 21-25 and 29 as allegedly being anticipated by U.S. Patent No. 5,075,077, and has rejected the claims on file as allegedly being unpatentable over U.S. Patent No. 5,846,492 in view of U.S. Patent No. 5,459,677, Wehlburg, Greensil, Ozdemir, Sum, Despagne or Swierenga. Applicant has addressed Examiner's rejections by way of the foregoing amendments and the comments set forth below.

The cited references do not teach or suggest either individually or in combination the presently claimed spectroscopic apparatus, which includes one or more than one upgraded primary calibration algorithm for one or more than one analyte, the one or more than one upgraded primary calibration algorithm in operative association with the spectroscopic apparatus and developed on the spectroscopic apparatus by combining some, or all of a calibration data set derived from a primary calibration set and obtained

from one, or more than one other apparatus with additional data obtained from the spectroscopic apparatus using a calibration set smaller than the primary calibration set and comprising samples distinct from and similar to those of the primary calibration set.

Accordingly, the presently claimed apparatus is novel and inventive in view of the cited references.

Applicant respectfully requests that that the rejections under 35 U.S.C. § 102(b) and 103 be withdrawn in view of the foregoing amendments and comments.

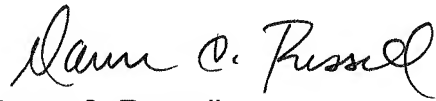
### **CONCLUSION**

Applicant submits that the above-identified application is now in a condition for allowance, and favorable reconsideration and prompt allowance of these claims are respectfully requested. Should Examiner believe that anything further is desirable in order to place the application in better condition for allowance, Examiner is invited to contact Applicant's undersigned attorney at (202) 775-5771.

In the event this paper is not considered to be timely filed, Applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension, together

with any additional fees that may be due with respect to this paper, may be charged to counsel's Deposit Account No. 01-2300, with reference to attorney docket No. 026806-00014.

Respectfully submitted,

A handwritten signature in cursive script that reads "Dawn C. Russell".

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